

IMPLEMENTING METROPOLITAN REFORM

Some Alternatives

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TABLE OF CONTENTS

INTRODUCTION

INTERGOVERNMENTAL COOPERATION 1

 Airports 1

 Cemeteries. 1

 Civil Defense. 1

 City-County Buildings 1

 Fire Equipment and Service Calls 2

 Jails 2

 Libraries 2

 Low-Rent Housing. 2

 Mental Health Centers 3

 Nursing Services. 3

 Public Halls 3

 Urban Renewal. 3

 Conclusion. 4

TRANSFER OF FUNCTIONS. 6

FEDERATION AND CITY-COUNTY CONSOLIDATION 9

 County Home Rule. 9

 The Changing Role of County Government. 9

 Alternative Forms of County Home Rule 10

 Establishing County Home Rule in Iowa 10

CONCLUSION 12

INTRODUCTION

In order to best meet needs of their citizens, local governments should be sufficiently flexible to adapt to changing times and conditions. Local governments must become more responsive to regional needs, as well as to local needs of individual communities. However, in many instances, local governments do not have the necessary constitutional and statutory tools to attain these goals. Changes can be made to enable local governments to meet future needs more effectively.

In Iowa, positive steps have already been taken in this direction. A well-known example is the Home Rule Act which has given municipalities greater authority over their own affairs. The legislature has also been highly supportive of intergovernmental cooperation. Chapter 28E of the Iowa Code allows a wide range of cooperative endeavors, and other scattered Code provisions permit specific types of cooperative arrangements.

So far, the legislature has not provided encouragement for more far-reaching changes in local government (such as transfers of functions, federations, and city-county consolidations), which would alter governmental structures and permit service delivery on an area-wide basis. A transfer of functions could be effected by simple legislation or by a combination of statutory and constitutional authorization. To provide for a federation or a city-county consolidation would probably necessitate both statutory and constitutional provisions.

Rather than adopting a piecemeal approach for authorizing each of the above structural innovations, a comprehensive package containing a variety of structural options could be provided through the passage of a county home rule amendment and supplemental legislation.

The purpose of this report is to discuss the options which are available now to local governments in Iowa through intergovernmental cooperation. Then the options, which could be made available through broad county home rule, are enumerated. The major focus of this report will be on county home rule and will include an explanation of the principles of county home rule and the methods needed for its introduction and implementation.

INTERGOVERNMENTAL COOPERATION

The Code of Iowa provides general authorization for intergovernmental cooperation through Chapter 28E. In addition to Chapter 28E, there are scattered throughout the Code provisions which allow specific types of cooperative endeavors.

The following list indicates a number of these specific authorizations in the Iowa Code concerning intergovernmental cooperation. This list is not exhaustive, but it is illustrative of certain types of cooperation permitted under existing statutes.

Airports

Any two municipalities or any two political subdivisions may contract with each other or any political subdivision for the joint control of real or other property suitable as the site of an airport and for joint construction, erection, improvement, operation, and maintenance of an airport on such site. (Sec. 330.4) A county or township may issue bonds and levy taxes for their respective share of cost and expenses. (Secs. 330.7, 330.16)

Cemeteries

A municipal council and the trustees of a township may join in the common purpose of improving, maintaining, and supporting a township cemetery. In such case, the two official bodies constitute a joint cemetery board and have equal voting power. (Sec. 359.36)

Civil Defense

Municipal councils, county boards of supervisors, and school boards are authorized to cooperate with the Iowa Civil Defense Administration and to form a joint municipal-county civil defense administration. Counties and municipalities are authorized to appropriate and expend public funds for civil defense purposes of the joint administration. (Sec. 29C.7)

City-County Buildings

Counties and county seat municipalities jointly may incorporate an authority to acquire or build a building for joint occupancy. This authority may also issue bonds, buy the necessary site, and lease additional space to the public. (Secs. 346.26-.27)

Fire Equipment and Service Calls

Municipalities have the power, when authorized by a majority of the electorate, to own, use, or jointly operate fire equipment and facilities with any other municipalities or townships and to provide for the purchase of such equipment and facilities with other governmental units. (Sec. 359.42) Benefited fire districts may also furnish or contract with cities, adjoining townships, and fire districts for fire protection services. (Sec. 357B.11)

Jails

A municipality has a right to confine prisoners in the county jail, but it must pay the county the cost of keeping the prisoners. (Secs. 356.1, .15)

Libraries

Under the Home Rule Act, no changes have occurred with regard to libraries. According to section 196 of the Home Rule Act, "A city library board functioning on the effective date of this act shall continue to function in the same manner until altered or discontinued as provided in this section." In order to make any changes in the library board or to replace it with another agency approval is needed by the voters in the city.

Section 196 also states that to retain the library board in the same manner, the city must keep all applicable ordinances and adopt by ordinance that part of the former Iowa Code which dealt with libraries. (Chapter 378)

Under the Code provision for city libraries, municipalities, townships, school corporations, county library districts, and counties may contract with each other for free library services for their residents. (Sec. 378.11)

Municipalities, with aid from counties, school districts, and other sources, may now enter into long-term leases to acquire library sites, buildings, and equipment. (Sec. 378.1)

Municipalities may enter into contracts with colleges or universities to construct or acquire a joint library. (Sec. 378.9)

Low-Rent Housing

Any two or more municipalities may join or cooperate with one another in the exercise of financing, planning, undertaking, constructing, or operating such a housing project or housing projects. (Sec. 403A.9)

Mental Health Centers

A county or an affiliation of counties having a total or combined population of over 35,000 is authorized to establish mental health centers with the approval of the Iowa Mental Health Authority. (Sec. 230A.1) These institutions may receive support from the county's mental health and institutions fund. (Sec. 444.12)

Nursing Services

Municipalities singly or in cooperation with other local governments may contract with non-profit nurses' associations for public health nursing services. (Sec. 143.1)

Public Halls

A municipality and a township may join together to build and equip a public hall. (Sec. 360.4)

Urban Renewal

A municipality is authorized to borrow money, accept grants, and receive other financial aid from the federal government, the state, county, or other public sources to carry out an urban renewal project. (Sec. 403.6)

For the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project located within an area in which it is authorized to act, the state, or any subdivision of the state, may do any and all things necessary to cooperate in planning and carrying out the urban renewal project. This would include lending or contributing funds, leasing, dedicating, or selling property. (Sec. 403.12)

The following list is areas where former Code provisions permitted intergovernmental cooperation. These Code authorizations were repealed by the Home Rule Act; yet it is still important to list them because cities retain their ability to cooperate in these areas by virtue of their home rule powers and Chapter 28E.

1. Annexation
2. Consolidation of contiguous municipalities

(These first two are subject to the approval of the City Development Board.)

3. Parks and Recreation
4. Joint Planning Commissions
5. Police Protection

6. Public Utilities
7. Refuse Disposal
8. Roads and Bridges
9. Sewers and Sewage Disposal
10. Swimming Pools

Conclusion

This list has been included in order to give you a more complete picture of the opportunities available for intergovernmental cooperation. It appears that agencies entering into a cooperative venture can do so either under Chapter 28E or under one of these specific authorizations. The matter of funding will probably determine which direction the agencies take. Unless the governmental units already have sufficient monies on hand to finance a cooperative project, they are likely to have to utilize a specific provision.

Intergovernmental cooperation has a number of advantages. Service contracts and joint agreements allow cooperating agencies to take advantage of economies of scale. Through them, local governments can obtain services or commodities which they are unable to provide themselves or could only provide at high cost. Contracts and agreements can save money and improve service delivery without disrupting the current political framework. They are also voluntary and can be terminated at any time.

Interlocal agreements and service contracts can be made fairly easily, usually without the need for voter approval. Under Chapter 28E of the Iowa Code, any public agency (including cities, counties, special districts, etc.) may enter into agreements with other public or private agencies for joint or cooperative action. Such an agreement may be for any purpose, so long as each of the parties has the power to act for that purpose individually. Chapter 28E also permits contracting between public agencies. In a contracting arrangement, it is necessary for only one of the participating agencies to be authorized to perform the service or function which is the subject of the contract. Both agreements and contracts require approval by the respective governing bodies, but not by the voters, before they can take effect.

On the other side of the coin, intergovernmental cooperation can be criticized for exacerbating problems in metropolitan areas. Regional problems require more permanent and comprehensive action. Although cooperative arrangements can be very useful and feasible in a variety of situations, it is important to look beyond cooperation alone and to examine several more comprehensive approaches for providing area-wide services.

The remainder of this report will be devoted to approaches which have not yet been tried here in Iowa. Excerpts from the constitutions and statutes of other states will be used to illustrate different possibilities for enabling legislation. In addition, some necessary components of such legislation will be examined.

TRANSFER OF FUNCTIONS

As of 1971, only 10 states had general constitutional or legislative authorization for transfers of functions, although in other states specific provisions may be found which authorize the transfer of a particular function. The types of provisions vary from state to state as is indicated in the chart on the next page.

Iowa has no general statutory or constitutional authorization for transferring functions. Under Chapter 28E, the county is authorized to perform certain municipal-type services and functions; however, there is at present no general constitutional or statutory authority which would allow a county to perform all municipal functions. While it is possible that, through contracting, a governmental entity may be able to effect a near complete transfer of a function to another entity, there are still marked distinctions between a service contract and a transfer of function (the actual relinquishment of responsibility, fiscal control, operational authority). While no general statutory authorization exists for transferring functions, particular functions (e.g., health and welfare) have been switched by state mandate from city to county jurisdiction.

As noted in the chart, transfers of functions can be authorized statutorily, constitutionally, or both. In Vermont, for example, the provision for transferring functions is solely statutory. If Iowa were to adopt a similar provision, the best way would probably be to amend Chapter 28E to include a provision allowing transfers of functions between governmental units. This could be written to include transfers between municipalities, special districts, counties, and other units, if desired. It would also be possible to empower the county through legislation to provide any service upon request.

Another possible route would be to provide constitutional authority or a combination of constitutional and statutory authority for transferring functions.

Florida is an example of a state where the provision for transferring functions is constitutional. Article VIII, section 4 of the Florida Constitution states the following:

By law or by resolution of the governing bodies of each of the governments affected, any function or power of a county, municipality, or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transferor and approval by vote of the electors of the transferee, or as otherwise provided by law.

CONSTITUTIONAL AND STATUTORY AUTHORITY
FOR TRANSFER OF FUNCTIONS
1971-1972

<u>Citation</u>	<u>Approval of Governing Body of Transferor</u>	<u>Approval of Governing Body Transferee</u>	<u>Concurrent Voter Majorities</u>	<u>Revocation</u>
CONSTITUTIONAL PROVISIONS				
Art. X, Sec. 13	Alaska ¹ (city)			Alaska
Art. XI, Sec. 8(a)	California ¹ (municipality)	California ¹ (county)		
Art. VIII, Sec. 4	Florida	Florida	Florida	
Art. VII, Sec. 10	Illinois ¹	Illinois ¹		
Art. VII, Sec. 28	Michigan	Michigan ²		
Art. IX, Sec. 1(h)		New York (County)	New York	
Art. X, Sec. 1	Ohio ¹ (municipality or township)	Ohio (county)	Ohio (referendum)	Ohio
Art. IX, Sec. 5	Pennsylvania	Pennsylvania	Pennsylvania	
Art. VII, Sec. 3	Virginia ¹	Virginia ¹ (regional government)		

STATUTORY PROVISIONS

Sec. 07.20.080	Alaska ¹	Alaska (borough)		
Gov. Sec. 25204	California ¹ (municipality)	California (county)		California
Sec. 5.4087	Michigan	Michigan ²		Michigan
Municipal Home Rule		New York ² (county)	New York	New York
Law Sec. 33-a				
53 Sec. 481	Pennsylvania	Pennsylvania ¹		
24 Sec. 4902(b)	Vermont ²	Vermont	Vermont ³	

1. The necessity of the consent of the governing body is implied, not explicitly stated.

2. The county begins the act of transfer by local law or ordinance, but is not necessarily the body the function is transferred to--it may transfer functions between and among the political subdivisions within it.

3. The transfer must also be recommended by a joint survey committee from the municipalities and approved by the attorney general.

Source: Advisory Commission on Intergovernmental Relations (ACIR), Substate Regionalism and the Federal System, III (Washington, D.C.: Government Printing Office, 1974) p. 34

California has a combination of statutory and constitutional authority. Article XI, section 8 of the California Constitution states the following:

- (a) The Legislature may provide that counties perform municipal functions at the request of the cities within them.
- (b) If provided by their respective charters, a county may agree with a city within it to assume and discharge specified municipal functions.

The sections of the California Code elaborate on the transfer procedure. Sections 51330-51335 allow the city to transfer such functions as are authorized by its charter, and section 25204 allows the county to accept and discharge such municipal functions as its charter allows.

As noted in the chart on page 7, there is variability as to requirements for transferring functions. Most require approval of the governing bodies of the transferor and the transferee. Some require concurrent voter majorities.

The Advisory Commission on Intergovernmental Relations (ACIR) recommends that a provision for transferring functions include the following components:¹

1. The decision for transferring functions should be made solely by the governing bodies involved. Voter approval provisions should not be required. The ACIR points out that such referenda serve minority interests because of the low level of turnout.
2. The provision should state that the involved governmental units compile a list of service standards at the time of the transfer, and perhaps designate an impartial body to ensure that these standards are maintained.
3. Transfers should be revoked only if the performance of the service fails to meet the originally specified standards.

FEDERATION AND CITY-COUNTY CONSOLIDATION

County Home Rule

Alteration of county government is necessary before major structural reform, such as federation or city-county consolidation, can occur. County governments must first be capable of undertaking a wide range of urban functions which will inevitably be required of them in a federated or consolidated regional arrangement.

Local officials are already familiar with the concept of home rule because of the recent amendment and legislation granting home rule to cities in Iowa. Home rule for counties would be similar; it would mean increased authority over the functions, as well as the structure of county government. Like city home rule, the need for county home rule arises when pressures weigh upon the system, and the old structures no longer can cope adequately with rising demands.

The Changing Role of County Governments

In the past, counties have provided a limited range of services, such as collecting taxes and maintaining rural roads. They have functioned primarily as an arm of the state and have been largely dependent on the state for their powers and authority. This condition originated in 1868 with Dillon's Rule, formulated by John F. Dillon, who was an Associate Justice of the Iowa Supreme Court. Dillon's Rule essentially defined counties as agencies of the state and stated that the only powers residing with counties were those expressly granted, necessarily implied, or essential to the functioning of local government.²

The transition from a largely rural to a largely urban society placed greater stress on urban county governments, as well as on cities, in Iowa. As a result of urbanization, many counties have been compelled to provide urban services, such as fire protection, water and sewage disposal, parks, and libraries. These services are not required by the state but are undertaken by counties to meet the needs of their citizens.

The newer role of county governments is incompatible with the remaining preponderance of state legislative control. Although Iowa has moved away from strict adherence to Dillon's Rule, its counties are still restricted in a number of ways. Other states have taken action to provide greater powers of self-determination to counties. Before 1917, California and Maryland were the only states having constitutional provisions which allowed all counties to adopt home rule charters. Even so, only a few counties in either state had taken advantage of this opportunity.³ Presently,

over a third of the states allow counties to draft and adopt their own charters. Nearly 70 home rule charter counties exist in these states. Of the charter counties, most were established after 1960.⁴ Other states have authorized more limited county home rule.

Alternative Forms of County Home Rule

Varying degrees of home rule powers are possessed by counties in certain states across the country. In some states, counties have been given broader powers over their governments, but they have not been permitted full home rule power which would enable them to draw up their own home rule charters.

There are several examples of more limited county home rule. Some counties are able to adopt other forms of government besides the plural executive form which is found in Iowa and in almost 90 percent of the counties in the United States. Other possible forms include the elected county executive plan or the county manager plan. In a few states, cities of a certain population class may draft their own home rule charters, but smaller counties do not have this authority. The State of Tennessee permits city-county consolidation after approval by concurrent voter majorities; however, counties are not allowed to frame and adopt home rule charters.

After studying constitutional and statutory provisions in other states, it becomes obvious that there is no set method of county home rule. Varying degrees and types of home rule powers have been bestowed upon county governments. It is left up to state legislatures to determine how much control counties may exercise over their governmental structure and service delivery systems.

A recent publication by the Institute of Public Affairs entitled Home Rule for Iowa Counties discusses the concept and principles of county home rule in greater detail than is possible here. This publication, written by Peter T. Gardner, a former Research Assistant at the Institute, is available upon request.

Establishing County Home Rule in Iowa

Certain county home rule powers may be effected by statute. For example, legislation could permit counties to perform all types of municipal functions or to utilize optional forms of governmental structure. It might even be possible to enable counties through legislation to frame and adopt their own charters. The statutory method has the advantage of being more expedient than amending the state constitution.

The statutory method does, however, have some drawbacks. Legislative home rule can be declared unconstitutional by the

Supreme Court or can be repealed by the legislature at any time. For these reasons, most states have provided constitutional authority or a combination of constitutional and statutory authority for county home rule.

In Iowa, supporters of home rule for counties have selected the constitutional route for initiating county home rule. An amendment has been proposed which permits home rule powers and authority for counties or joint county-municipal corporation governments. Under the amendment, counties would be allowed to draft home rule charters individually or jointly with a city within the county after the passage of implementing legislation establishing procedures for charter drafting. Counties not drafting charters would still have residual home rule powers. The implementing legislation for the amendment could also grant local option taxation. This amendment has already passed one session of the state legislature and must pass a second session before being put on the ballot for voter approval.

This county home rule amendment along with supplemental legislation can become a vehicle for metropolitan reform in Iowa. Through a local government charter, it would be possible to achieve city-county consolidation or more moderate reforms such as a transfer of functions or federation. Charter writing would give county citizens freedom to fashion their government to fit local conditions.

CONCLUSION

The passage of the county home rule amendment and the appropriate implementing legislation will provide county officials with the means to upgrade county government so that it can better cope with current needs. It will also provide citizens with the opportunity through charter writing to establish a government which they feel will work best for them in accomplishing specified responsibilities and solving area problems. Hopefully, through the charter writing process, citizens will gain a better understanding of how government works and will have more interest in governmental affairs.

It is important to remember that county home rule is only a vehicle toward improved government. Significant reform will occur only if citizens and governmental officials have the motivation and commitment to use that vehicle.

FOOTNOTES

¹Advisory Commission on Intergovernmental Relations, Substate Regionalism and the Federal System, III (Washington, D.C.: Governmental Printing Office, 1974), p. 164.

²Peter T. Gardner, Home Rule for Iowa Counties (Iowa City, University of Iowa: Institute of Public Affairs, 1974), p. 13.

³National Association of Counties From American Counties Today, 1973 (Washington, D.C.: National Association of Counties, 1973), p. 52.

⁴Ibid., p. 53.

